



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **OPL OPM**

### Introduction

This hearing was convened as a result of the Landlords' application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act"). The Landlords applied for:

- an Order of Possession under a Two Month Notice for Landlord's Use of Property dated July 15, 2022 ("2 Month Notice") pursuant to sections 49 and 55; and
- an Order of Possession pursuant to a mutual agreement to end tenancy dated July 15, 2022 pursuant to section 55.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 11:45 am in order to enable the Tenant to call into this teleconference hearing scheduled for 11:00 am. The two Landlords and two advocates ("JC" and "DC")) attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. DC acted as a translator for the two Landlords. I confirmed that the correct call-in numbers and participant codes were provided in the Notice of Dispute Resolution Proceeding ("NDRP"). I also confirmed from the teleconference system that the two Landlords, JC, DC and I were the only ones who had called into this teleconference.

JC stated the Landlords served the NDRP and their evidence (collectively the "NDRP Package") on the Tenant in person. Based on the undisputed testimony of JC, I find the NDRP Package was served on the Tenant in accordance with the provisions of sections 88 and 89 of the Act.

JC stated the Tenant did not serve any evidence on the Landlords for these proceedings.

### Issues to be Decided

Are the Landlords entitled to an Order of Possession?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

JC stated there was no written tenancy agreement between the Landlords and Tenant. JC stated the tenancy commenced about 20 years ago with rent of \$400.00 payable on the 15<sup>th</sup> day of each month. JC stated there has not been a rent increase since the tenancy commenced. JC stated the Tenant paid the Landlords a security deposit of \$200.00 and the Landlords are still holding the deposit in trust for the Tenant.

JC submitted into evidence a copy of the 2 Month Notice and stated the Landlords served it on the Tenant in-person on July 15, 2022. The effective date of the 2 Month Notice was September 14, 2022. Based on the undisputed testimony of JC, I find the Tenant was served with the 2 Month Notice in accordance with the provisions of section 88 of the Act. The 2 Month Notice stated the reason for ending the tenancy was because the Landlords' child would be occupying the rental unit.

JC submitted into evidence a signed copy of the Mutual Agreement between the Landlords and the Tenant. JC stated that, at the time the 2 Month Notice was served on the Tenant, the Tenant agreed to vacate the rental unit by September 14, 2002 and signed the Mutual Agreement.

JC stated the Tenant has not vacated the rental unit. JC stated the Landlords are unaware of the Tenant making an application for dispute resolution to dispute the 2 Month Notice.

DC stated the Landlords are her parents and she has been living with them in the upper level of the residential property for more than 35 years. DC stated she is an accountant, works from home and requires quiet to perform her job. DC stated her parents are now babysitting two grandchildren. DC stated she will be moving into and occupying the

rental unit when the Tenant vacates the unit. JC and DC stated the Landlords were acting in good faith when they gave the Tenant the 2 Month Notice.

### Analysis

Subsection 49(3) and subsections 49(5) through 49(7) of the Act provide:

- 49 (3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit;
- ...
- (5) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.
- (6) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (5), the tenant
  - (a) is *conclusively presumed* to have accepted that the tenancy ends on the effective date of the notice, and
  - (b) must vacate the rental unit by that date.
- (7) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.

[emphasis added in italics]

The Landlord served the Tenant with the 2 Month Notice pursuant to section 49(3) of the Act on the basis that their daughter, DC, will be occupying the rental unit. The 2 Month Notice was served on the Tenant in-person on July 15, 2022. As such, the Tenant had until July 20, 2022 to file an application to dispute to the 2 Month Notice. There is no evidence that the Tenant made an application to dispute the 2 Month Notice. As a result, section 49(6) of the Act provides that the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 2 Month Notice, being September 14, 2022. As of the date of this hearing, the tenant has not vacated the rental unit.

I have reviewed the 2 Month Notice and find it complies with the form and content requirements of section 52 of the Act. As such, the 2 Month Notice complies with section 49(7) of the Act. Section 55(2) through 55(4) of the Act states:

- 55(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:
- (a) a notice to end the tenancy has been given by the tenant;
  - (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;
  - (c) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
  - (c.1) the tenancy agreement is a sublease agreement;
  - (d) the landlord and tenant have agreed in writing that the tenancy is ended.
- (3) The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.
- (4) In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 *[Resolving Disputes]*,
- (a) grant an order of possession, and
  - (b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

Based on the undisputed testimony of JC and DC, I find the Landlords have satisfied the burden of demonstrating, on a balance of probabilities that the Landlords were acting in good faith when they gave the 2 Month Notice. As such, I find the 2 Month Notice was served on the Tenant for a valid reason.

The Tenant has not made an application to dispute the 2 Month Notice. As such, sections 55(2) and 55(4) provide that I must grant the Landlord an Order of Possession. Therefore, I find that the Landlords are entitled to an Order of Possession pursuant to

section 55(4)(a) of the Act. Pursuant to section 49(6)(a) of the Act, I find the tenancy ended on the effective date of the 2 Month Notice, being September 14, 2022.

I have reviewed the Mutual Agreement and find the Landlords are also entitled to an Order of Possession pursuant to section 55(2)(d) of the Act.

### Conclusion

The Landlords are provided with an Order of Possession effective two (2) days after service of this Order on the Tenant. Should the Tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 01, 2023

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Residential Tenancy Branch